

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, on the relation
of the State Engineer, and the
UNITED STATES OF AMERICA,

Plaintiffs,

v.

RAMON ARAGON, et al.

Respondent.

02 NOV 12 AM 11:52

Robert Martinez
CLERK-SANTA FE

69-
No. CIV 7941-JC

RIO CHAMA STREAM
SYSTEM

Section 4, Rio El Rito Section

**RESPONSE TO COMMUNITY OF EL RITO DITCH ASSOCIATION'S
AND ACEQUIA JARAL'S AMENDED MOTION TO ENFORCE
PARTIAL FINAL DECREE AND TO ENJOIN FURTHER DIVERSION
OF WATER**

For his response to the amended motion herein, Respondent, Rudy Martinez states:

1. Respondent admits the allegations of Paragraph 1 of the amended motion.
2. Answering the allegations of Paragraph 2 of the amended motion, Respondent admits that the Partial Final Decree affirms the water rights of each Defendant as against each other Defendant based on court orders entered in the individual sub-files, but to the extent that the allegations of Paragraph 2 apply a priority of water rights, Respondent denies that the Partial Final Decree apportions or allocates water from the Rio El Rito Stream System between the present parties.
3. Respondent admits the allegations of Paragraphs 3, 4, and 5 of the amended motion.
4. Answering the allegations of Paragraph 6 of the amended motion, Respondent denies the date of priority for Acequia Jaral, but admits the remaining allegations of Paragraph 6.
5. Respondent admits the allegations of Paragraphs 7, 8, and 9 of the amended motion.
6. Answering the allegations of Paragraph 10 of the amended motion, Respondent

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admits there has been no final determination of priority dates for private ditches within the Rio El Rito Stream System, but denies the remaining allegations of Paragraph 10.

7. Respondent admits the allegations of Paragraph 11 of the amended motion.

8. Answering the allegations of Paragraph 12 of the amended motion, Respondent admits the provisions of NMSA 1978, Section 73-2-47 and requirements therein, but denies purported meetings or notices were made in accordance with the provisions of NMSA 1978, Section 73-2-47, or that notice was given to Respondent.

9. Answering the allegations of Paragraph 13 of the amended motion, Respondent denies the allegations of Paragraph 13, except that Respondent admits that available water was used for irrigation of Sub-file No. 32.1.

10. Respondent denies the allegations of Paragraph 14 of the amended motion.

11. Answering the allegations of Paragraph 15 of the amended motion, Respondent states in response that three commissioners of the El Rito Ditch Association and three other male persons arrived and trespassed without notice at Mr. Martinez's property and intimidated and threatened Respondent using inappropriate and illegal self-help remedies. As a result of the commissioners' and the three other persons' actions, Respondent exercised self-defense which resulted in Respondent's criminal prosecution as stated in Paragraph 15.

12. Respondent denies the allegations of Paragraph 16; of the amended motion.

13. Respondent admits the allegations of Paragraph 17 of the amended motion.

14. Respondent denies the allegations of Paragraph 18, 19, and 20 of the amended motion.

15. Answering the allegations of Paragraph 21 of the amended motion, Respondent

admits that it is within the public interest to enforce the provisions of the Partial Final Decree to ensure that the orderly administration of water occurs, but because there has not been a surface water management program established to provide for the orderly administration of water during droughts or water shortages and no watermaster for the Rio El Rito Stream System, to administer Respondent's water rights, Respondent denies that he has violated provisions of the Partial Final Decree. Furthermore, Respondent has conformed to the custom and practice of prior years' irrigation.

16. Respondent denies the allegations of Paragraph 22 of the amended motion.

17. Answering the allegations of Paragraph 23 of the amended motion, Respondent is without information and knowledge sufficient to ascertain the truth of the allegations of Paragraph 16. Respondent does not receive mail in El Rito, but at a Post Office Box in Espanola, New Mexico.

18. Respondent admits the allegations of Paragraph 24 of the amended motion.

19. Answering the allegations of Paragraph 25 of the amended motion, Respondent is without information and knowledge sufficient to ascertain the truth of the allegations of Paragraph 25.

AFFIRMATIVE DEFENSES

20. Petitioners have failed to state a cause of action upon which relief may be granted.

21. Petitioners have failed to establish and implement an orderly method of allocation of water from the Rio El Rito Stream System, pursuant to the Partial Final Decree and therefore its purported enforcement is illegal and beyond the scope of the Partial Final Decree.

22. Petitioners' enforcement efforts of confronting Respondent were premature, unlawful and unauthorized by law or the Partial Final Decree.

23. Respondent did not violate and exceed his water allocation under the Partial Final Decree.

24. Petitioners' action is barred by the doctrine of waiver, estoppel, and unclean hands.

WHEREFORE, for the reasons stated above, Respondent prays as follows:

- A. That the amended motion be denied.
- B. That Petitioners be ordered to adopt and implement an orderly method of water allocation on the Rio El Rito Stream System so that the parties may work in good faith with the Community of El Rito Ditch Association and the Acequia Jaral, pursuant to NMSA 1978, Section 73-2-47, prior to the diversion of water from the Rio El Rito in 2003; and
- C. For such other relief as this Court deems necessary and proper.

PADILLA LAW FIRM, P. A.

By: 

Ernest L. Padilla

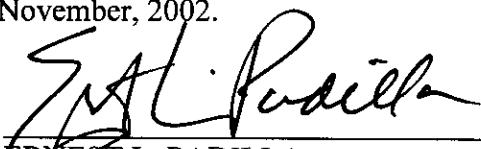
P.O. Box 2523

Santa Fe, New Mexico 87504

505-988-7577

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Amended Motion was mailed to Mary E. Humphrey, Attorney for El Rito Ditch Association and Acequia Jaral, P.O. Box 1574, El Prado, New Mexico 87529, Ed Newville, Attorney for State of New Mexico State Engineer, P.O. Box 25102, Santa Fe, New Mexico 87504, Special Master Vicki Gabin, United States District Court, P.O. Box 2384, Santa Fe, New Mexico 87504, and Darcy Busnell, Adjudication Clerk, United States District Court, 600 Lomas Blvd., Suite 610, Albuquerque, NM 87102 this 8th day of November, 2002.


ERNEST L. PADILLA

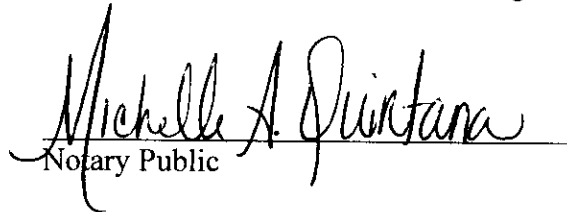
VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE) ss.

I, RUDY MARTINEZ, upon my oath do swear that the allegations of the foregoing Response to Community of El Rito Ditch Association's and Acequia Jaral's Amended Motion to enforce Partial Final Decree and to Enjoin Further Diversion of Water is true and correct to the best of my knowledge and belief.


Rudy Martinez

THE FOREGOING VERIFICATION was signed and sworn to before me on the 8th day of November, 2002.


Michelle A. Quintana
Notary Public

My commissions expires:

March 15, 2003